

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07 cv. 4780 (SAS)

MALIBU TEXTILES, INC.,

Plaintiff,

-against-

CAROL ANDERSON, INC., and CABI, LLC.,
Defendants.

DEPOSITION OF ROBERT JABLIN

Tuesday, February 19, 2008
6100 Park of Commerce Boulevard
Boca Raton, Florida
11:35 a.m. - 2:50 p.m.

1 Q -- a document? Okay.

2 And I interrupted you, so please continue.

3 A And so we modified the pattern. Thusly,
4 we gave it a new style number, and that was the date
5 it was modified.

6 Q And let's look then at item Jablin 5,
7 which is the document -- in particular, the top
8 document is a document indicating Style 34080/1307.
9 And there, there is an indication as well date
10 received. Do you see that?

11 A Yes.

12 Q Can you tell me, please, what was received
13 on 2/12/92.

14 A The approval to go ahead with the pattern.

15 Q And when you say the approval to go ahead
16 with the pattern, what does that mean? What do you
17 mean when you say the approval?

18 A If you go to the last page --

19 Q Jablin --

20 A -- of J-5.

21 Q I apologize. J-5.

22 A And you will see the black and white
23 sketch. This was a sketch submitted to Malibu for
24 their approval. The number of the sketch also
25 refers to -- we have the system that's also the

1 photocopy that is included in Jablin 5, and he is
2 pointing to one of the floral features?

3 A No. I'm pointing to these straight lines
4 that run between the motifs.

5 Q And unless Miss Wolff has an objection --
6 withdrawn.

7 What would you call those straight lines?

8 A Clips.

9 Q Clips. Okay. And for the purposes of
10 making the record clear, then the clips that are --
11 the clips are the straight lines that go from
12 element in the pattern to element in the pattern; is
13 that correct?

14 A Yes.

15 Q And that is known as a clip?

16 A A clip.

17 Q And when the pattern was first done on the
18 dates that we have looked at, 1991 approximately, it
19 had the clips on it; is that correct?

20 A That's correct.

21 Q And then in 2004, based on the date that
22 appears on Jablin 6, am I correct that the clips
23 were removed from the pattern?

24 A Correct.

25 Q And other than the removal of the clips,

1 did your staff follow?

2 A There were none given.

3 Q Then in this sequence, looking now at 7,
4 which is the quality control report dated May 8,
5 '03, to which there's attached again a color
6 photocopy of some artwork, can you tell me what the
7 change, if any, was from 6 to 7.

8 A Using the same design, we modified what we
9 refer to as the gauge of the pattern.

10 Q And to a non- --

11 A In other words, there are two gauges in
12 the type of knitting I do. One is 48 gauge, which
13 means there are 24 needles to the inch, and there's
14 36 gauge, which means there is 18 needles to the
15 inch. And in a cost attempt to reduce the cost of
16 the product, we went from 48 gauge to 36 gauge.

17 Q So that the difference from 6 to 7 is in
18 terms of the gauge only and not the design?

19 A No. It's 6 -- I'm sorry. Yes. In gauge
20 only and not the design.

21 Q And in terms of the design, the difference
22 from 5 to 7 is that the clip doesn't appear in 7 and
23 it appears in 5?

24 A That's correct.

25 Q Are they otherwise the same patterns?

1 A There were no conversations, because this
2 is the way we run our company and have run it for
3 years. What we design for our customers is done on
4 an exclusive basis, and upon giving us the order for
5 the sketch, to the artwork that we did for them,
6 they have the right to copyright the design, as long
7 as we get all the knitting on the pattern.

8 Q And did you ever have a discussion with
9 Malibu wherein that was the specific agreement that
10 you reached with Malibu?

11 A If there was a conversation, it was years
12 ago, because this is the agreement I have with every
13 customer.

14 Q Metrotek does register some copyrights on
15 its own, doesn't it?

16 A No.

17 Q You are sure?

18 A Yes.

19 Q Prior to October 22, 2007, did Metrotek
20 have an understanding that the works that were
21 created by Metrotek for Malibu were works made for
22 hire?

23 A I'm sorry. I don't understand the
24 question.

25 MR. LAZARUS: Can we read it back.

1 (Thereupon the question was read back by
2 the reporter.)

3 THE WITNESS: Could you explain, please.

4 BY MR. LAZARUS:

5 Q No. You don't understand the question?
6 I'm referring to whether or not you had an agreement
7 with Malibu that the works that were created by
8 Metritek for Malibu were works made for hire.

9 A When you say works made for hire, can you
10 explain that. It's a legal term.

11 Q What it says in this letter, referring to
12 the October 2, 2007 letter. Did you have such an
13 agreement with Malibu?

14 A I had the agreement that I stated to you
15 with Malibu, that all of my customers, including
16 Malibu, have the right to copyright the artwork once
17 we have gotten the original order.

18 Q Is it once you've gotten the original
19 order or for so long as you get all the knit work?

20 A It's a combination, and it's an
21 understanding that I have with every customer.

22 Q Tell me exactly what the understanding is.

23 A That anything that we design and create,
24 our customer has the right to copyright it and
25 defend it, but we get all of the knitting regarding

1 the pattern.

2 Q And if you don't?

3 A If we don't, then I have a problem with
4 the customer that we take up separately.

5 Q Is it a problem with the copyright or is
6 it a problem with the customer?

7 A With the customer.

8 Q Because the copyright is given away?

9 A That's correct.

10 Q And this is an understanding, sir, that
11 you had for years back with Malibu?

12 A With Malibu and all my customers.

13 Q Can you tell me, please, why it doesn't
14 say that in this letter of October 22, 2007?

15 A I don't know. I didn't write the letter.

16 Q You signed it.

17 A I signed it. I didn't write it.

18 Q So the letter is not accurate?

19 A I didn't say that.

20 Q Well, we looked at the first sentence, and
21 the first sentence deals with this notion of works
22 made for hire, with respect to which I asked you
23 when you made that agreement, and --

24 A The agreement, as I've said to you many
25 times already, has been done for years. The legal

MASTER AGREEMENT

WHEREAS, Metritek LLLP ("Metritek") and Malibu Textiles, Inc. ("Malibu", and together with Metritek, the "Parties") have been engaged in a business relationship since in or around 1986 in which Metritek created lace designs commissioned by Malibu (the "Lace Designs") and has knitted bulk lace fabric for sale by Malibu based upon the Lace Designs; and

WHEREAS, since the inception of their business relationship, the Parties have been operating under an oral agreement under which Metritek transfers and assigns all ownership rights, including copyrights, in the Lace Designs to Malibu, immediately upon Malibu's approval of such Lace Designs; and

WHEREAS, the Parties wish to avoid any confusion that Malibu is the owner of all rights in the Lace Designs, including copyright rights throughout the world; and

WHEREAS, Metritek does not dispute Malibu's ownership rights in any of the Lace Designs prepared by Metritek for Malibu.

NOW, THEREFORE, in consideration of these premises, and the conditions, covenants and promises set forth herein, Metritek and Malibu hereby agree as follows:

1. This agreement confirms the oral agreement under which Metritek and Malibu have been operating since the inception of Metritek and Malibu's business relationship in or around 1986 regarding the creation and ownership of Lace Designs created by Metritek for Malibu.
2. The Lace Designs covered by this agreement are set forth in Schedule A, which is attached hereto and incorporated by reference. The Parties reserve their right to amend Schedule A from time to time to add new Lace Designs when Malibu commissions new Lace Designs from Metritek.
3. Malibu agrees that it will use Metritek as its exclusive knitter for any lace fabric manufactured from the Lace Designs set forth in Schedule A.
4. In exchange for Malibu's promise to exclusively use Metritek as its knitter for lace fabric manufactured from the Lace Designs, at the moment of approval by Malibu of a Lace Design created by Metritek, Metritek irrevocably and perpetually assigned and transferred to Malibu ownership of all rights in the Lace Designs, including but not limited to any and all copyright rights in the Lace Designs throughout the world, the right to register copyright in the Lace Designs in the United States and throughout the world, and the right to sue for past, present and future infringements thereof. Moreover, Metritek expressly waives any "artist's rights" or "moral rights" that Metritek might have in the Lace Designs. This provision applies with equal force to previously created Lace Designs as well as future Lace Designs created by Metritek for Malibu.

5. Metritek hereby grants Malibu the right, as its attorney-in-fact, to execute, acknowledge, deliver and record in the U.S. Copyright Office, any foreign equivalent thereof, or elsewhere, any and all such documents that Metritek fails or refuses promptly upon request to execute, acknowledge, deliver, and record.

6. Metritek will, upon Malibu's request, execute, acknowledge, deliver and/or record such additional documents as Malibu may deem necessary to evidence the intent of this agreement and effectuate Malibu's rights hereunder.

7. In the case of any breach of this Master Agreement by Malibu, Metritek agrees that its sole remedy is money damages. Metritek expressly waives any rights it may have to contest the validity of any copyright or other ownership right previously assigned or transferred to Malibu.

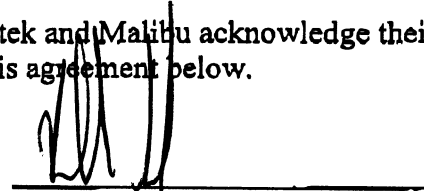
IN WITNESS WHEREOF, Metritek and Malibu acknowledge their agreement to the foregoing terms and conditions by signing this agreement below.



Robert Jablin

Metritek LLLP
6100 Park of Commerce Boulevard
Boca Raton, FL 33487-8207

Date: 3-6-08



Richard Samuels

Malibu Textiles, Inc.
49 West 37th Street
New York New York 10018

Date: 3/6/08

SCHEDULE A

STYLE	PATTERN	DESCRIPTION/CONTENT	FINISH WIDTH	MILL VENDOR	MILL STYLE
1302		64%NYL/36%RAYON	58/60	11185 METRITEK CORP.	34081
1307		66%NYL/34%BRT RAY	56/58	11185 METRITEK CORP.	34080
		66%NYL/34%BRT RAY	56/58	11185 METRITEK CORP.	34080
		66%NYL/34%BRT RAY	56/58	11185 METRITEK CORP.	34080
1534		75%NYLON/25%RAYON	58/60	11185 METRITEK CORP.	35819
1548		100% NYLON	54/56	11185 METRITEK CORP.	35965
		CHANTILLY SCALLOPED LACE			
1549		64%NYLON/36%RAYON	58/60	11185 METRITEK CORP.	35966
		64%NYLON/36%RAYON	58/60	11185 METRITEK CORP.	35966
		64%NYLON/36%RAYON	58/60	11185 METRITEK CORP.	35966
1658		73% STR. NYLON/27% RAYON	41/42	11185 METRITEK CORP.	36836
1659		81%NYLON/19%RAYON	50/52	11185 METRITEK CORP.	36885
		ALL OVER FLORAL SWIRL			
1660		72%NYL/16%RAY/12%LYCRA	54/56	11185 METRITEK CORP.	36886
		ALL OVER FLORAL SWIRL W/ STRETCH			
		72%NYL/16%RAY/12%LYCRA	54/56	11185 METRITEK CORP.	36886
1675		56%STR NYL/26RAY/18%POLY	46/48	11185 METRITEK CORP.	36931
1683		88%NYL/12%LYCRA(1440 STR)	52/54	11185 METRITEK CORP.	36952
1688		88% NYLON/12% LYCRA	64/66	11185 METRITEK CORP.	36969
		ALL OVER FERN STRETCH LACE			
1693		100% NYLON	58/60	11185 METRITEK CORP.	37038
		ALL OVER CLIPPED CHANTILLY			
1694		86% NYLON/14% LYCRA	58/60	11185 METRITEK CORP.	37015
		ALLOVER STRTCH CLIPPED CHANTILLY			
		86% NYLON/14% LYCRA	58/60	11185 METRITEK CORP.	37015
		86% NYLON/14% LYCRA	58/60	11185 METRITEK CORP.	37015
1730		65% BRT RAYON 35% STR NYLON	36/38	11185 METRITEK CORP.	37201
1746		52%NYL/28%RAY/20%LYCRA PUCKER	41/42	11185 METRITEK CORP.	37251
		1827 PATTERN PUCKERED			
1764		87%NYLON/13%SPANDEX	54/56	11185 METRITEK CORP.	37350
		BORDER LACE 36" REPEAT			
1797		70%NYLON/17%RAY/13%LYCRA	50/52	11185 METRITEK CORP.	37409
		STRETCH BAND LACE - GALLOON			

STYLE	PATTERN	DESCRIPTION/CONTENT	FINISH WIDTH	MILL VENDOR	MILL STYLE
2110		61%NYL/26%GOLD MET/13%LYCRA GOLD METALLIC VERSION OF 1967	48/50	10645 HOPE LACE,LIMITED	38572
2111		62%NYLON/29%GOLD METAL/9%LYCRA GOLD METALLIC VERSION OF 2099	48/50	10645 HOPE LACE,LIMITED	38568
2118		71%NYLON/11%RAYON/18%SPANDEX FLOUNCE PATTERN	58/60	10645 HOPE LACE,LIMITED	38591
2119		71%NYLON/18% SPANDEX/11%SIL MET DOUBLE FLOUNCE LACE	58/60	10645 HOPE LACE,LIMITED	38622
2134		65% TACTEL NYLON/35% NYLON FLORAL W/ BORDER	54/56	10645 HOPE LACE,LIMITED	38656
2174		100% NYLON	46/48	10645 HOPE LACE,LIMITED	38805
2175		77% NYLON/23% LYCRA LIGHTWEIGHT LYCRA FLORAL LACE	44/46	10645 HOPE LACE,LIMITED	38801
2176		90% NYLON/ 10% SPANDEX GALLOON SWIRL FLORAL WITH LYCRA	64/66	10645 HOPE LACE,LIMITED	38804
2231		61% NYLON/26% RAYON/13% SPANDEX PLEATED VERSION OF 1967	48/50	10645 HOPE LACE,LIMITED	38934
2272		89% STRETCH NYLON/11% LYCRA STRETCH VERSION OF 2093	56/58	10645 HOPE LACE,LIMITED	38640
2319		100% NYLON FLORAL GALLOON AS #2176 PATTERN	TBD	10645 HOPE LACE,LIMITED	
2330		83% STR NYLON/17% LYCRA ALLOVER STRIPE STRETCH LACE	56/58	10645 HOPE LACE,LIMITED	39106
2331		NYLON/LYCRA PLEATED STRIPE LACE	TBD	10645 HOPE LACE,LIMITED	39109/PLEAT
2342		84% NYLON/7% LYCRA/9% RAYON LEOPARD	48/50	10645 HOPE LACE,LIMITED	39125
2343		87% NYLON/7% LYCRA/6% RAYON TIGER	48/50	10645 HOPE LACE,LIMITED	39126
2343				10645 HOPE LACE,LIMITED	
2343				10645 HOPE LACE,LIMITED	
2344		47% STR NYL/33% BRT RAY/20% POLY FLORAL GALLOON W/ RUNNING LINERS	47/49	10645 HOPE LACE,LIMITED	39123
2351		70% NYLON/21% RAYON/9% SPANDEX FLORAL GALLOON W/ CRACKLE MESH	48/50	10645 HOPE LACE,LIMITED	39130
2375		70% NYLON/27% RAYON/3% LYCRA 1720 PATT W/LYCRA	40/42	10645 HOPE LACE,LIMITED	39477
2402		95% STRETCH NYL/5% CATIONIC POLY HEX NET	58/60	10645 HOPE LACE,LIMITED	39230
2409		47%STR NYL/33%BRT RAY/20% POLY 1720 WITH MISSING YARNS(PRCMO)	47/49	10645 HOPE LACE,LIMITED	
2423		82% NYLON/8% RAYON/10% LYCRA MK DOTS IN STRETCH(GALLOON)	48/50	10645 HOPE LACE,LIMITED	39303

STYLE	PATTERN	DESCRIPTION/CONTENT	FINISH WIDTH	MILL VENDOR	MILL STYLE
2424		90% NYLON/10% RAYON MK DOTS IN NON STRETCH (GALLOON)	54/56	10645 HOPE LACE, LIMITED	39309
2433		57% NYLON/33% RAYON/10% LYCRA 1527 PATT IN 36 GAUGE (GALLOON)	48/50	10645 HOPE LACE, LIMITED	39250
2434		88% NYLON/12% LYCRA ALLOVER WAVE STRETCH JAQUARD	64/66	10645 HOPE LACE, LIMITED	39310
2441		NYLON/LYCRA/RAYON 2343 WITH EXTRA LYCRA	48/50	10645 HOPE LACE, LIMITED	39126
2445		87% NYLON/7% LYCRA/6% RAYON TIGHTER VERSION OF 2343	48/50	10645 HOPE LACE, LIMITED	39344
2463		47% STR NYLON/33% RAYON/20% TEX NYL SAME PATT AS 1720 W/O POLY	47/49	10645 HOPE LACE, LIMITED	39838
2466		74% NYLON/17% LYCRA/9% POLY CLIPPED FLORAL GLN W/ SCROLL GRND	40/42	10645 HOPE LACE, LIMITED	38452
2474		53% NYL/25% RAY/18% POLY/4% LYCRA 2375 PATTERN WITH POLY	40/42	10645 HOPE LACE, LIMITED	39453
2475		59% NYL/30% STR NYL/6% C. POLY/5% LYC CLIP FLORAL GLN W/ SCROLL (PUCKER	42/44	10645 HOPE LACE, LIMITED	39473
2477		91% NYL/5% LYCRA/4% CAT. POLY 2351 CLUSTER W/ HEX NET, BRDN GRND	40/42	10645 HOPE LACE, LIMITED	39474
2480		73% NYLON/17% RAYON/10% LYCRA LEAF PATT W/ SCROLL GALLOON LACE	48/50	10645 HOPE LACE, LIMITED	39480
2481		79% NYLON/16% LYCRA/5% POLY FLORAL CLUSTER W/ SCROLL GLN LACE	46/48	10645 HOPE LACE, LIMITED	39489
2482		74% NYLON/16% LYCRA/10% RAYON MINI DOT BALLS ON MESH GRND (GLN)	49/51	10645 HOPE LACE, LIMITED	39479
2493		90% NYLON/10% LYCRA FLORAL GALLOON STRETCH LACE	52/54	10645 HOPE LACE, LIMITED	39500
2495		80% NYLON/11% RAYON/9% LYCRA ANIMAL SKIN GALLOON	50/52	10645 HOPE LACE, LIMITED	39509
2511		67% NYLON/33% RAYON RIDGID VERSION OF 2433	48/50	10645 HOPE LACE, LIMITED	39563
2531		82% NYLON/9% RAYON/9% LYCRA FLORAL GALLON w/ CUTOUT SCALLOPS	48/50	10645 HOPE LACE, LIMITED	39572
2548		45.5% NYL/45.5% CAT POLY/9% LYCRA PLEATED VINE CONCEPT	51/53	10645 HOPE LACE, LIMITED	39616
2575		69% NYLON/28% RAYON/3% LYCRA A/O STRETCH FLORAL CLUSTER LACE	46/48	10645 HOPE LACE, LIMITED	39671
2585		67% NYLON/33% RAYON RIDGID VERSION OF 2351-GALLOON	52/54	10645 HOPE LACE, LIMITED	39687
2589		75% NYLON/22% RAYON/3% LYCRA NON CLIP VERSION OF 2375	41/42	10645 HOPE LACE, LIMITED	39694
2592		65% NYLON/32% RAYON/3% LYCRA ALLOVER NON CLIP 2375 PATTERN	46/48	10645 HOPE LACE, LIMITED	39701
2646		47% RAYON/40% NYLON/13% LYCRA FLORAL GALLOON LACE	48/50	10645 HOPE LACE, LIMITED	39779
2697		57% NYLON/30% RAYON/13% BOURDON	40/42	10645 HOPE LACE, LIMITED	39900